

**PROPOSED REGULATION OF THE
COMMISSIONER OF MORTGAGE LENDING**

LCB File No. R091-10

September 13, 2010

EXPLANATION – For purposes of Sections 2-31, matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted from the draft version heard at the public adoption hearing held on November 5, 2010, and matter underlined is matter to be added to that draft version. For purposes of Sections 32-37, matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1 and 38, NRS 645B.060; §§2-33, NRS 645F.277; §34, NRS 645B.080; §35, NRS 645B.060 and 645B.080; §36, NRS 645B.185; §37, NRS 645B.060 and 645B.670.

A REGULATION relating to mortgage lending; defining the term “money” for the purpose of determining whether money is being transferred to a mortgage broker; establishing provisions governing the arranging or servicing of loans of which an investor has ownership or in which an investor has a beneficial interest; requiring a mortgage broker who services a loan to keep certain records; requiring a mortgage broker under certain circumstances to provide to investors in a construction loan a performance bond conditioned upon faithful performance of the construction contract; requiring certain additional information to be disclosed to investors; providing that a mortgage broker or mortgage agent commits a violation if the mortgage broker or mortgage agent violates certain laws governing the servicing of loans; repealing a provision governing action by investors in a loan which has more than one investor; and providing other matters properly relating thereto.

Section 1. Chapter 645B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 33, inclusive, of this regulation.

Sec. 2. *As used in this chapter and chapter 645B of NRS, the Commissioner interprets the term “money” to include, without limitation, cash, a cashier’s check, a negotiable instrument or any other form of payment, including a wire transfer.*

Sec. 3. *As used in sections 3 to ~~33~~ 31, inclusive, of this regulation, the words and terms defined in sections 4 to 7, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 4. “Authorized representative” means a person designated by a borrower or investor to act on behalf of the borrower or investor in a written authorization signed by the person and the borrower or investor.

Sec. 5. “Borrower” means a person to whom a loan is issued.

Sec. 6. “Loan” ~~[means a loan secured by a lien on real property and]~~ includes a commercial mortgage loan and a residential mortgage loan. As used in this section, “commercial mortgage loan” has the meaning ascribed to it in NRS 645E.030.

Sec. 7. “Majority of the investors” means investors holding 51 percent or more of the ~~[outstanding principal balance]~~ beneficial interests of a loan.

Sec. 8. A mortgage broker who uses a valuation of real property in the marketing or solicitation of a loan shall disclose in each piece of marketing and in each solicitation:

1. The valuation of the real property on an “as is” basis, whether or not the valuation also contains an “as built” or “as completed” basis for valuation; and
2. The loan-to-value ratio calculated on the basis of ~~[the valuation or valuations]~~ each valuation used in the marketing or solicitation.

Sec. 9. A mortgage broker shall not accept money from an investor to acquire ownership of or a beneficial interest in a loan which has more than one private investor at the time of origination, unless the mortgage broker provides to each investor a form which allows the investor to choose one of the following options:

1. That, upon receipt of a written request submitted by another investor who owns or has a beneficial interest in the loan, the mortgage broker may provide to that other investor the name, address, telephone number and electronic mail address of the investor~~[.];~~ ;

2. That, upon receipt of a written request submitted by another investor who owns or has a beneficial interest in the loan, the mortgage broker may provide to that other investor the name, address, telephone number and electronic mail address of the investor only if the loan is in default~~{-}~~or

3. That the ~~{name,}~~ address, telephone number and electronic mail address of the investor must remain confidential and that the mortgage broker may not provide that information to any other investor unless the investor provides the mortgage broker with subsequent written permission to provide such information to other investors.

Sec. 10. A mortgage broker who arranges or makes a loan shall not include in any loan document a provision which requires ~~{an}~~ a private investor to participate in mandatory or binding ~~{mediation or}~~ arbitration of disputes relating to the loan.

Sec. 11. A mortgage broker shall not disburse any money received by the mortgage broker from ~~{an}~~ a private investor to acquire ownership of or a beneficial interest in a loan unless the instrument which creates a lien on real property as security for ~~{a}~~ the loan, including, without limitation, any instrument assigning a beneficial interest in the loan:

1. Names as mortgagees under a mortgage or beneficiaries under a deed of trust, as applicable, the investors who own or have a beneficial interest in the loan;

2. Is recorded before or concurrently with the disbursement of the money; and

3. Does not name as a mortgagee under a mortgage or beneficiary under a deed of trust, as applicable, the mortgage broker unless:

(a) The mortgage broker is an investor in the loan; or

(b) An assignment to the investors is recorded concurrently with the mortgage or deed of trust.

Sec. 12. 1. Before servicing a loan in which a private investor has acquired a beneficial interest, a mortgage broker must enter into a ~~{loan}~~ written servicing agreement with each investor which describes specifically the services which the mortgage broker will provide and the compensation the mortgage broker will receive for those services. The compensation of the mortgage broker must include an amount reasonably necessary to pay the cost of servicing the loan.

2. A mortgage broker shall include in each ~~{loan}~~ servicing agreement provisions which:

(a) Require the mortgage broker to:

(1) Deposit in a ~~{collection}~~ trust account all money paid to the mortgage broker in full or partial payment of a loan, unless ~~{applicable}~~ provision of law authorizes the mortgage broker to deposit such money in a different manner;

(2) ~~{Transmit to investors pro rata according to their respective interests in the loan, within 30 days of}~~ Release to the investors, pursuant to paragraph (a) of subsection 5 of NRS 645B.175, within 15 days after receipt, all money paid to the mortgage broker in full or partial payment of a loan ~~{, unless applicable law provides otherwise}~~ ;

(3) Record a request for special notice and notice of default for any encumbrance on the real property which has priority over the lien securing the loan or any other real property securing the loan;

(4) Provide to [the] each investor prompt written notice of:

(I) Any default on the loan; and

(II) Any lis pendens, ~~{or}~~ mechanic's lien or other lien recorded against the real property securing the loan after the origination of the loan if the mortgage broker has become aware that such an instrument has been recorded;

(5) *If taxes or an insurance premium on the real property which secures the loan becomes delinquent, provide to each investor an itemized report stating:*

(I) Each specific tax and insurance premium which is delinquent;

(II) The total amount of the delinquency;

(III) The dates on which penalties will be assessed for late payments and the amount of ~~those penalties~~ each penalty; and

(IV) An estimated amount of the taxes and insurance premiums on the real property which are due at the end of each quarter for the 12 months immediately following the report; and

(6) Upon receiving a written request from an investor for a tally of any vote of the investors, provide to the investor a statement of the number of investors voting in favor of an action and the number of investors voting against the action and the percentage of beneficial interest represented by such vote.

(b) Prohibit the mortgage broker from:

(1) Commingling with the assets of the mortgage broker any money paid to the mortgage broker in full or partial payment of a loan, unless ~~applicable~~ a provision of law authorizes such commingling; or

(2) Using money paid to the mortgage broker in full or partial payment of a loan for any transaction other than the servicing transaction for which the money was paid, unless a provision of ~~applicable~~ law authorizes such use.

(c) Allow the majority of ~~the~~ investors or the mortgage broker to transfer the ~~loan~~ servicing agreement to another entity authorized to service loans or terminate the ~~loan~~

servicing agreement for any reason, upon providing written notice at least 30 days before the effective date of the transfer or termination.

Sec. 13. 1. *A mortgage broker shall not assess or collect any fee which is not:*

(a) Authorized by the loan documents or loan servicing agreement entered into pursuant to section 12 of this regulation; or

(b) Assessed or collected in exchange for bona fide services rendered or costs incurred.

2. *A mortgage broker shall apply all fees collected in the manner set forth in the loan documents or loan servicing agreement entered into pursuant to section 12 of this regulation.*

Sec. 14. ~~*[A mortgage broker shall not place an investor into a limited liability company, business trust or other entity prior to foreclosure of the real property securing the loan, unless the mortgage broker:*~~

~~*—1.— Provides a copy of the organizational documents of the limited liability company, business trust or other entity to each investor not later than 5 days before the investor transfers his or her interest in the loan; and*~~

~~*—2.— Obtains the written authorization of each investor who wishes to transfer his or her interest in the loan to the limited liability company, business trust or other entity.]*~~

A mortgage broker shall not arrange to place or place a private investor into a special purpose entity prior to foreclosure of the real property securing the loan, unless the mortgage broker:

1. Provides a copy of the organizational documents and operating or management agreement of the special purpose entity to each investor at least 5 days before the investor transfers his or her interest in the loan; and

2. Obtains the written consent of each investor who wishes to transfer his or her interest in the loan to the special purpose entity after the time the documents required in subsection (1) are provided to the investor.

3. For purposes of this section, a ‘special purpose entity’ means a limited liability company, business trust or other entity formed by the investors to foreclose on the real property which secures the loan or to hold title to such real property obtained through foreclosure or any other means.

Sec. 15. Except as otherwise permitted by law, a mortgage broker shall not release a borrower or guarantor from personal liability for a loan~~[,]~~ unless a majority of the investors approve such a release.

Sec. 16. The fiduciary obligation imposed ~~[pursuant to]~~ by NRS 645B.0147 on a mortgage broker who services a loan includes, without limitation, the duty to:

1. Act in the best interest of the client of the mortgage broker, including, without limitation, safeguarding any money received from a borrower and following all reasonable and lawful instructions from a borrower.

2. Disclose to each investor who owns or has a beneficial interest in the loan:

(a) Whether the mortgage broker, or any owner, general partner, officer, director~~[,]~~ or employee ~~[or relative]~~ of the mortgage broker, has a financial, business~~[,]~~ or professional ~~[or personal]~~ relationship to or interest in the borrower and the nature of that relationship or interest; and

(b) Any material fact that the mortgage broker knows or, with exercise of reasonable care, should know may affect the rights or interest of the investor or the ability of the investor to obtain the intended benefit of the servicing transaction.

3. Provide to an investor, not later than ~~[5-business]~~ 10 days after receiving a written request from the investor, an accounting of all money and other consideration received by the mortgage broker from the borrower and all costs charged to the investor.

4. Refuse to accept or collect any fee for services rendered by the mortgage broker~~[.]~~ unless the investor from whom the fee is accepted or collected has agreed to the fee in writing in the loan servicing agreement.

5. ~~[Provide sufficient personnel and telephone facilities to respond]~~ Respond promptly to inquiries from an investor or borrower regarding his or her loan.

Sec. 17. A mortgage broker who services a loan shall maintain established business hours and disclose the established business hours to each borrower and investor.

Sec. 18. A mortgage broker who services a loan shall:

1. Adopt, maintain and comply with reasonable policies and procedures for the:

(a) Supervision and training of ~~[his]~~ his or her employees in the servicing of loans; and

(b) Prompt and appropriate response to ~~[and resolution of inquiries and]~~ complaints from borrowers and investors.

2. Adopt and maintain internal controls to ensure that the mortgage broker is complying with the policies and procedures described in subsection 1.

3. Designate ~~[a]~~ one or more contact persons~~s~~ to whom a borrower or investor may direct complaints and inquiries concerning a loan. The mortgage broker shall train ~~[the]~~ each contact person to answer inquiries concerning loans and to resolve or assist in resolving complaints concerning loans.

4. Provide to each borrower and investor a telephone number or electronic mail address to which the borrower or investor may direct inquiries during established business hours.

5. Respond within a reasonable time under the circumstances to the request of the borrower to correct any errors relating to the loan.

6. Maintain all documentation related to a complaint or dispute with respect to the servicing of the loan for 2 years after the date the complaint or dispute is resolved.

Sec. 19. A mortgage broker who services a loan shall not refuse to communicate with the authorized representative of a borrower or investor. The mortgage broker may take reasonable steps to verify that a person is an authorized representative of a borrower or investor.

Sec. 20. 1. ~~{During each 12-month period,}~~ Upon written request, a mortgage broker who services a loan shall provide annually to the borrower ~~{, at no cost,}~~ one written payment history of the loan at no cost.

2. Not later than 21 days after receiving from a borrower or the authorized representative of a borrower a written request for an accounting of the debt owed by the borrower or a payment history of the debt, a mortgage broker shall send to the borrower or the authorized representative the requested information.

3. If a request described in subsection 2 includes a written request for a payment history of the loan, the mortgage broker shall provide a payment history which:

(a) Covers the period stated in the written request or, if no period is stated in the written request, the 12 months immediately preceding the date of the written request; and

(b) Includes the date and amount of all payments made by, or credited to the account of, the borrower and the current unpaid balance of the loan.

Sec. 21. 1. Except as otherwise provided in this section or ~~{applicable}~~ as otherwise provided by law, not later than 5 business days after receiving from a borrower, an investor or the authorized representative of a borrower or investor a written request for a statement of the

total amount of money that is required to pay off the loan, the mortgage broker shall provide such a statement to the borrower, investor or authorized representative at no cost.

2. A mortgage broker who receives a written request described in subsection 1 may charge a reasonable fee for providing the requested statement if the borrower or investor who submitted the request, or on whose behalf the authorized representative submitted the request, has submitted three or more such written requests during the calendar year.

Sec. 22. *A mortgage broker who services a loan shall provide annually to the borrower and each investor an account statement which contains:*

1. A clear and conspicuous statement which identifies all payments made by the borrower during the period covered by the statement and any payments made from a trust account;

2. An address to which a borrower or investor may send complaints and inquiries concerning the loan;

3. The telephone number or electronic mail address of the contact person designated by the mortgage broker to receive complaints and inquiries pursuant to section 18 of this regulation; and

4. A statement that the borrower or investor may file a complaint concerning the mortgage broker with the Division. The statement must provide the ~~[Division's]~~ Internet website and physical addresses of the Division.

Sec. 23. *1. A mortgage broker who services a loan shall not obtain insurance on the real property securing the loan if the mortgage broker knows or has reason to know that the borrower has in place an effective policy of insurance on the real property.*

2. ~~-[Not later than 10 days after taking any action to obtain insurance on real property securing a loan, a mortgage broker who services the loan shall provide written notice of that~~

~~action to the borrower.]~~ A mortgage broker who services a loan shall provide written notice of any action to obtain insurance on the real property securing a loan to the borrower within 10 days after taking such an action.

3. If a mortgage broker who services a loan secured by improved real property obtains insurance on the real property securing the loan, the mortgage broker shall not obtain such insurance in an amount which exceeds the replacement cost of the improvements to the real property.

4. A mortgage broker who receives money from a borrower or investor for taxes or insurance premiums on the real property which secures a loan shall:

(a) If the mortgage broker has received sufficient money to pay the full amount due for the taxes or insurance premiums, pay the taxes or insurance premiums on or before the due date.

(b) If the mortgage broker has not received sufficient money to pay the full amount due for ~~[and does not pay]~~ the taxes or insurance premiums immediately notify the borrower and each investor of the amount necessary to cure the shortage and the consequences of the failure to do so.

5. If a mortgage broker who is required to pay taxes or insurance premiums on or before the due date pursuant to paragraph (b) of subsection 4 fails to do so, ~~on or before the due date,]~~ the mortgage broker shall notify the borrower and each investor in writing of:

- (1) The reason for the failure to pay;
- (2) The amount owed;
- (3) The nature, timing and amount of any penalty for failure to pay; and
- (4) The actions planned ~~for~~ by the mortgage broker to pay the taxes or insurance premiums and any penalty amount.

~~—[(b) If the mortgage broker has not received sufficient money to pay the full amount due for the taxes or insurance premiums, immediately notify the borrower and each investor of the amount necessary to cure the shortage and the consequences of the failure to do so.~~

~~—5.]~~ 6. *If a mortgage broker has obtained a policy of insurance on real property securing a loan and receives reasonable proof from the borrower that the borrower has obtained an appropriate policy of insurance on the real property, the mortgage broker shall refund to the borrower any unearned premiums paid by, or charged to, the borrower or charged for the insurance obtained by the mortgage broker.*

Sec. 24. 1. If an investor owes money to the mortgage broker who is servicing a loan or to other investors, the mortgage broker shall not withhold money due to the investor in order to offset the money owed to the mortgage broker or to another investor, unless:

(a) The mortgage broker obtains the written consent of the investor who owes the money; or

(b) A court order requires the mortgage broker to withhold the money.

2. A mortgage broker may include in a loan servicing agreement a provision which provides written consent to withhold money due to an investor in order to offset money owed by the investor to the mortgage broker or other investors.

Sec. 25. 1. A mortgage broker who services a loan on behalf of an investor shall:

(a) Adopt and maintain written policies and procedures for the processing of money received from a borrower in full or partial payment of the loan, including, without limitation, policies and procedures governing the processing of overpayments and underpayments; and

(b) Conduct periodic audits of the processing of money received from a borrower in full or partial payment of the loan to ensure that the mortgage broker has credited such money in

accordance with the policies and procedures adopted pursuant to this subsection and the provisions of this chapter and chapter 645B of NRS.

2. A mortgage broker who receives money from a borrower on behalf of an investor in full or partial payment of the loan shall credit the amount of money received to the account of the ~~{borrower}~~ investor on the business day on which the money is received, except that~~{,}~~ if the money is not accompanied by sufficient information to credit the money to the account of the ~~{borrower}~~ investor, the mortgage broker shall credit the payment to the account of the ~~{borrower}~~ investor as soon as commercially reasonable but not later than 5 days after receiving the money.

3. Not later than 15 days after a payment on a loan serviced on behalf of an investor becomes due and remains unpaid, a mortgage broker shall send a payment reminder notice to a borrower at the borrower's last known address.

4. Before the mortgage broker charges a borrower a late fee or any other penalty in connection with money received in full or partial payment of a loan serviced on behalf of an investor, the mortgage broker shall credit to the account of the ~~{borrower}~~ investor the amount of any money received from the borrower in full or partial payment of the loan.

5. If a mortgage broker ~~{does not}~~ fails to credit money received from a borrower in full or partial payment of a loan serviced on behalf of an investor~~{,}~~ to the account of the ~~{borrower}~~ investor in accordance with subsection 2, not later than 10 days after receiving the money, the mortgage broker shall send to the ~~{borrower}~~ investor at the ~~{borrower}~~ investor's last known address a notice stating the reason that the mortgage broker has not credited the money to the account of the ~~{borrower}~~ investor and any actions which the borrower must take to bring current the borrower's account.

6. A mortgage broker who services a loan on behalf of an investor shall not:

(a) Charge a borrower a late fee or any other penalty in connection with money received in full or partial payment of the loan if:

(1) The amount of money received is a full payment for the applicable period which is paid:

I. If the mortgage broker is open on the due date of the payment, on or before the due date of the payment; or

II. If the mortgage broker is not open on the due date of the payment, on or before the next day after the due date that an office of the mortgage broker is open to customers until 5 p.m.; and ~~if the broker is open on the due date, or the next day that an office of the mortgage broker is open to customers until 5 p.m.; or~~

(2) The only delinquency in the account is attributable to late fees or any other penalties imposed in connection with an earlier payment.

(b) Deduct from a regular loan payment received by the mortgage broker or from ~~[a trust]~~ an escrow account maintained pursuant to subsection 4 of NRS 645B.175 any late fee or other penalty imposed in connection with a payment in full or partial satisfaction of the loan.

(c) Use an amount greater than the amount which is past due as the basis for a late fee or any other penalty imposed in connection with a payment in full or partial satisfaction of the loan.

(d) For each scheduled payment in full or partial satisfaction of the loan, charge more than one late fee or any other penalty imposed in connection with a payment in full or partial satisfaction of the loan.

(e) Add to the unpaid principal balance of the loan a late fee or any other penalty imposed in connection with a payment in full or partial satisfaction of the loan.

Sec. 26. A mortgage broker shall not service more than one loan secured by the same parcel of real property unless:~~[unless the investors in each loan are identical.]~~

1. The investors in each loan are identical; or

2. The investors in each loan consent in writing to the mortgage broker servicing such loans and provide the mortgage broker with a written waive of any conflict of interest.

Sec. 27. ~~[H.]~~ A mortgage broker shall not act as a construction control with respect to money belonging to a borrower or investor. If a borrower or investor wishes to [use] utilize a construction control for money belonging to the borrower or investor, a mortgage broker must place the money with a person who is independent of the mortgage broker and is licensed or authorized to accept such ~~[funds]~~ money. The ~~[funds]~~ money must be subject to the control of a construction control which is in compliance with, or exempt from, the provisions of NRS 627.180 or 627.183.

~~[2.—As used in this section, “construction control” has the meaning ascribed to it in NRS 627.050.]~~

Sec. 28. A mortgage broker who is servicing a loan ~~[for]~~ on behalf of investors shall not make any statement designed or intended to unduly influence the outcome of any vote of the investors, unless the mortgage broker is an investor who owns or has a beneficial interest in the loan.

Sec. 29. If a mortgage broker is servicing a residential mortgage loan on behalf of an investor and the borrower defaults on the residential mortgage loan, the mortgage broker must

provide notice to the borrower, within 30 days after the default and ~~[at least]~~ not less than 30 days ~~[prior to]~~ before recording a notice of default, ~~[to the borrower]~~ of:

1. The options to mitigate the loss and default services~~[,]~~ which are provided by the mortgage broker;
2. The contact information of local housing counseling agencies approved by the United States Department of Housing and Urban Development and located within the geographic area of the borrower's residence; and
3. Any foreclosure mediation programs available to the borrower or required by law.

Sec. 30. In addition to the reportsg required by NRS 645B.080 and NRS 645B.260, the Commissioner may require a mortgage broker who services a loan to submit to the Commissioner annually or as otherwise requested by the Commissioner a report on delinquencies, loss mitigation efforts and foreclosures with respect to loans serviced by the mortgage broker. The report must be on a form prescribed by the Commissioner.

Sec. 31. ~~[1.—A mortgage broker shall not manage real property for persons who were investors in a loan and who have become the owners of the real property which secured the loan because of a foreclosure on the real property or through any other means, unless the mortgage broker is an owner of the property or has:~~

~~—(a) A current permit to engage in property management issued by the Real Estate Division pursuant to NRS 645.6052 to 645.6058, inclusive; and~~

~~—(b) Entered into a property management agreement which is signed by the mortgage broker and each person for whom the mortgage broker is managing the real property and which complies with the provisions of NRS 645.6056.~~

~~—2.—As used in this section:~~

~~—(a) “Manage real property” means to perform the physical, administrative or financial maintenance and management of real property, or the supervision of such activities, pursuant to a property management agreement.~~

~~—(b) “Property management agreement” has the meaning ascribed to it in NRS 645.0192.]~~

1. The operating or management agreement of the special purpose entity shall include a provision that the real property shall not be listed for sale or sold unless the mortgage broker first provides to the investors:

(a) An appraisal or broker opinion of value of the real property which is dated not more than 4 months before the recommendation, except that, if a majority of the investors, excluding the mortgage broker, waive in writing the requirement to provide an appraisal or broker opinion of value, the mortgage broker is not required to provide the appraisal or broker opinion of value. A mortgage broker shall not act as the attorney-in-fact or the agent of an investor with respect to the giving of a written waiver pursuant to this paragraph.

(b) A written disclosure that includes the following:

(i) An estimated marketing period and marketing plan necessary to obtain a short sale of the real property or the fair market value for the real property, as established by the appraisal or broker opinion of value of the real property provided pursuant to paragraph (a) of subsection 1, if the requirement for such an appraisal or broker opinion of value is not waived.

(ii) The name, address and telephone number of any real estate broker, real estate broker-salesperson or real estate salesperson with whom the mortgage broker intends to list the real property for sale.

(iii) A summary of any proposed purchase and sale agreement concerning the real property.

(iv) If an appraisal or broker opinion of value of the real property is required pursuant to paragraph (a) of subsection 1, the value of the real property as stated in that appraisal or broker opinion of value and the appraised value or other valuation of the property at the time the loan was originated.

(v) If the requirement for an appraisal or broker opinion of value of the real property was waived pursuant to paragraph (a) of subsection 1, a statement of that fact.

(vi) The assessed value of the real property for the purposes of property taxation at the time the loan was originated.

(vii) The current assessed value of the real property for the purposes of property taxation and whether the mortgage broker intends to appeal that assessed value.

(viii) The reasons in support of the recommendation of the mortgage broker with respect to the proposed listing agreement or purchase and sale agreement.

(ix) A summary of the options available to the investors if they elect to reject the proposed listing agreement or purchase and sale agreement.

(x) The right of each investor to obtain upon written request a list containing the name, address, telephone number and electronic mail address, if available, of every other investor.

(xi) A summary of the options available to an investor who does not wish to participate in the listing of the property or in the sale of the real property on the terms set forth in the proposed purchase and sale agreement if the majority of the investors accept the listing of the property or the proposed purchase and sale agreement.

(xii) If the proposed purchase and sale agreement requires the investors to finance any portion of the purchase price and all the investors have not waived in writing the requirements of this paragraph:

- (1) A loan application completed by the prospective buyer;*
 - (2) The credit report of the prospective buyer, if the buyer is a natural person;*
 - (3) The financial statement of the prospective buyer, if the buyer is not a natural person; and*
 - (4) A recent preliminary report of title to the real property.*
- (c) Upon the closing of the sale of the real property, the mortgage broker shall send, or arrange to have sent, to each investor a final, completed HUD-1 form or other final closing document that itemizes all the costs, fees and payments associated with the sale of the real property.*

- (2). An appraisal provided pursuant to paragraph (a) of subsection 1 must:*
- (a) Meet the standards set forth in the USPAP;*
 - (b) If the real property includes a dwelling, meet the requirements of the Home Valuation Code of Conduct;*
 - (c) Be performed by an appraiser who is authorized to perform the appraisal in the state where the real property is located;*
 - (d) If the loan for which the real property was security was a loan to fund the acquisition of vacant land or the construction of an improvement to real property, reflect the value of the real property on an “as is” basis and may include valuation on an “as built” or “as completed” basis; and*

(e) Not be performed by the mortgage broker or an employee or agent of the mortgage broker.

(3). As used in this section:

(a) “Dwelling” has the meaning ascribed to it in Section 103 of the Truth in Lending Act, 15 U.S.C. § 1602.

(b) “USPAP” has the meaning ascribed to it in NAC 645C.0095.

(c) “Special purpose entity” has the meaning ascribed to it in Section 14.

~~Sec. 32. [1. A mortgage broker who manages real property for persons who were investors in a loan and who have become the owners of the real property which secured the loan shall not recommend that the real property be listed for sale or sold unless the mortgage broker provides to the persons for whom the mortgage broker is managing the real property:~~

~~—(a) A written disclosure which complies with the provisions of subsection 2; and~~

~~—(b) An appraisal of the real property which is dated not earlier than 4 months before the recommendation, except that, if a majority of the investors, excluding the mortgage broker, waive in writing the requirement to provide an appraisal, the mortgage broker is not required to provide the appraisal. A mortgage broker shall not act as the attorney-in-fact or the agent of an investor with respect to the giving of a written waiver pursuant to this paragraph.~~

~~—2. Not later than 5 days before the closing date of a sale of real property managed by a mortgage broker for persons who were investors in a loan and who have become owners of the real property which secured the loan, the mortgage broker shall provide the written disclosure to each person who has an ownership interest in the real property.~~

~~—3. The written disclosure provided pursuant to paragraph (a) of subsection 1 must include the following:~~

~~—(a) An estimated marketing period and marketing plan necessary to obtain a short sale of the real property or the fair market value for the real property, as established by the appraisal of the real property provided pursuant to paragraph (b) of subsection 1, if the requirement for such an appraisal is not waived.~~

~~—(b) The name, address and telephone number of any real estate broker, real estate broker-salesperson or real estate salesperson with whom the mortgage broker has listed the real property for sale.~~

~~—(c) A summary of any proposed purchase and sale agreement concerning the real property.~~

~~—(d) If an appraisal of the real property is required pursuant to paragraph (b) of subsection 1, the appraised value of the real property as stated in that appraisal and the appraised value or other valuation of the property at the time the loan was originated.~~

~~—(e) If the requirement for an appraisal of the real property was waived pursuant to paragraph (b) of subsection 1, a statement of that fact.~~

~~—(f) The assessed value of the real property for the purposes of property taxation at the time the loan was originated.~~

~~—(g) The current assessed value of the real property for the purposes of property taxation and whether the mortgage broker intends to appeal that assessed value.~~

~~—(h) The reasons in support of the recommendation of the mortgage broker with respect to the proposed listing agreement or purchase and sale agreement.~~

~~—(i) A summary of the options available to the owners of the property if they elect to reject the proposed listing agreement or purchase and sale agreement.~~

~~—(j) The right of the each person who owns an interest in the real property to obtain upon request a list containing the name, address, telephone number and electronic mail address, if available, of every other person who owns an interest in the real property.~~

~~—(k) A summary of the options available to a person who owns an interest in the property and who does not wish to participate in the listing of the property or in the sale of the real property on the terms set forth in the proposed purchase and sale agreement if the majority of the investors accept the listing of the property or the proposed purchase and sale agreement.~~

~~—(l) If the proposed purchase and sale agreement requires the investors to finance any portion of the purchase price and all the investors have not waived in writing the requirements of this paragraph:~~

~~——(1) A loan application completed by the prospective buyer;~~

~~——(2) The credit report of the prospective buyer, if the buyer is a natural person;~~

~~——(3) The financial statement of the prospective buyer, if the buyer is not a natural person; and~~

~~——(4) A recent preliminary report of title to the real property.~~

~~—4. An appraisal provided pursuant to paragraph (b) of subsection 1 must:~~

~~—(a) Meet the standards set forth in the USPAP;~~

~~—(b) If the real property includes a dwelling, meet the requirements of the Home Valuation Code of Conduct;~~

~~—(c) Be performed by an appraiser who is authorized to perform the appraisal in the state where the real property is located;~~

~~—(d) If the loan for which the real property was security was a loan to fund the acquisition of vacant land or the construction of an improvement to real property, reflect the value of the~~

~~real property on an “as is” basis and may include valuation on an “as built” or “as completed” basis; and~~

~~—(c) Not be performed by the mortgage broker or an employee or agent of the mortgage broker.~~

~~—5. As used in this section:~~

~~—(a) “Dwelling” has the meaning ascribed to it in Section 103 of the Truth in Lending Act, 15 U.S.C. § 1602.~~

~~—(b) “USPAP” has the meaning ascribed to it in NAC 645C.0095.]~~

~~Sec. 33. [Upon the closing of the sale of real property managed by a mortgage broker, the mortgage broker shall send, or arrange to have sent, to each person for whom the mortgage broker managed the real property a final, completed HUD-1 form or other final closing document that itemizes all the costs, fees and payments associated with the sale of the real property.]~~

Sec. 32. NAC 645B.072 is hereby amended to read as follows:

645B.072. As used in NRS 645B.080, the Commissioner interprets “complete and suitable records” to mean:

1. A file that includes, but is not limited to, the following documents, if applicable to the type and purpose of the loan:

- (a) The real estate sales contract;
- (b) Escrow instructions;
- (c) The preliminary title report;
- (d) The loan application, including, but not limited to, any attachments or supplements;

- (e) An appraisal report or any other independent assessment of the value of the mortgaged property;
 - (f) Any verification of representations made by the consumer on the application for a mortgage;
 - (g) A credit report;
 - (h) A good faith estimate of closing costs, including any additional estimates if there is a material change to the original estimate, and any disclosures required pursuant to the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq.;
 - (i) The Uniform Settlement Statement, as described pursuant to 12 U.S.C. § 2603;
 - (j) Any commitments made by the lender to the consumer, including, but not limited to, a commitment to guarantee the consumer a certain interest rate and a commitment to fund the loan; and
 - (k) Any additional disclosures required by state or federal law.
2. For loans brokered to private investors, a file that must include all the items required pursuant to subsection 1, if applicable, and any additional documents or disclosures required pursuant to this chapter, chapter 645B of NRS or federal law, including, but not limited to:
- (a) The original documents subject to the provisions of NAC 645B.080 or 645B.215;
 - (b) All disclosures required pursuant to NRS 645B.185 and 645B.186 ~~and~~ and NAC ~~[645B.073,]~~ 645B.210, **645B.215** and 645B.220; and
 - (c) If the mortgage broker maintains any account pursuant to NRS 645B.175, the mortgage broker must include records that demonstrate compliance with the provisions of NRS 645B.115 and NAC 645B.150 and 645B.160 and any other applicable law.

3. *For loans serviced for private investors, a file that must include all the items required pursuant to subsections 1 and 2, if applicable, and any additional documents or disclosures required pursuant to this chapter, chapter 645B of NRS or federal law, including, but not limited to:*

(a) For each loan, a record of:

(1) The amount of all money received by the mortgage broker in connection with the loan and the name of the person from whom the mortgage broker received the money;

(2) All disbursements of money in connection with the loan;

(3) The date of each transaction concerning the loan;

(4) The principal balance of the loan;

(5) The amount and due date of each payment toward the loan; and

(6) The servicing history of the loan, including, but not limited to, any servicing history of the loan before the mortgage broker began servicing the loan;

(b) A record concerning the servicing of delinquent loans, including, but not limited to, the servicing of loans in foreclosure or affected by a bankruptcy proceeding;

(c) For each loan, a file of all written correspondence, including, but not limited to, facsimile transmissions and electronic mail correspondence, relating to the servicing of the loan, including, but not limited to, communications and correspondence between the mortgage broker and:

(1) The borrower, investor or authorized representative of the borrower or investor;

(2) Any person who serviced the loan before the mortgage broker began servicing the loan;

(3) Any governmental entity or government sponsored enterprise; or

- (4) The person who was the lender of the loan;*
- (d) A record of all votes of the investors, including, but not limited to, all written ballots or authorizations submitted by the investors; and*
- (e) A record of all loan modification agreements, trustee deeds of sale of real property and any deeds completed in lieu of foreclosure.*

4. For loans funded by the mortgage broker, a file that must include all the items required pursuant to subsection 1 and all closing documentation, including, but not limited to, a recorded or confirmed deed of trust, the title insurance policy, the note, the hazard insurance policy and any subsequent assignment to additional investors. Assignments to private investors must comply with all documentation requirements of this chapter and chapter 645B of NRS.

~~[4.]~~ 5. Any additional books and records that must be maintained or readily accessible at each place of business of the mortgage broker, including, but not limited to, any branch office as applicable to the operations of the mortgage broker, including:

- (a) Any book or record that evidences compliance with applicable federal and state laws and regulations;
- (b) A copy of each item of advertising material that was published or distributed by or on behalf of the mortgage broker in the format in which the material was published or distributed;
- (c) A copy of any written complaint against the mortgage broker, together with all correspondence, notes, responses and other documentation related to the disposition of the complaint;
- (d) All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, cancelled checks and other records that relate to the business of the mortgage broker;

(e) Copies of all federal tax withholding forms, reports of income for federal taxation and evidence of payments to all employees, independent contractors and other persons that worked for the mortgage broker;

(f) Copies of all documents evidencing a contractual relationship between the mortgage broker and any third-party provider of services related to mortgages, including, but not limited to, contracts, invoices, billings and remittances to the provider by or on behalf of the mortgage broker;

(g) Copies of all material correspondence related to the business of the mortgage broker, including, but not limited to, electronic messages; and

(h) Copies of all reports, audits, examinations, inspections, reviews, investigations or other similar activities relating to the business of the mortgage broker performed by any third party, including, but not limited to, any regulatory or supervisory authority.

Sec. 33. NAC 645B.080 is hereby amended to read as follows:

645B.080 1. Except as otherwise provided in section 1 of LCB File No. R056-08, before an investor who is a natural person makes a loan for which a licensed mortgage broker is acting as a broker, the mortgage broker must provide, unless specifically waived in writing, to the investor:

(a) A written application for the loan which is signed by the prospective borrower and which contains the borrower's address, a history of his employment and income, details of monthly payments he is obliged to pay and any other information requested by the investor.

(b) Evidence of the history of employment of the prospective borrower and income, such as a tax return or an employer's statement of the borrower's past yearly income.

(c) A report on the history of credit of ~~the~~ *each* prospective borrower *and guarantor* issued by a credit reporting agency, including an explanation by the borrower *or guarantor* of any

material derogatory item in the report and evidence that the report has been compared for accuracy to ~~[the borrower's application for the loan.]~~ *other credit or financial information furnished by the borrower or guarantor.*

(d) *A report of business information or a report on the history of credit, if available, of each borrower or guarantor who is not a natural person.*

(e) An analysis by the mortgage broker of the ability of the prospective borrower to pay his monthly debts.

~~[(e)]~~ (f) A preliminary report on the status of the title of the property which is proposed as security for the loan.

(g) *If the loan is a construction loan, a copy of a performance bond in an amount not less than 100 percent of the construction amount and conditioned upon the faithful performance of the construction contract.*

2. A mortgage broker shall retain a copy of the documents described in subsection 1 and shall retain in his files a statement from the investor, on a form provided by the Division, acknowledging that:

(a) The investor received the documents, or that the investor waived in writing the right to receive the documents;

(b) The decision to make the loan was made after the investor had the opportunity to receive and review the documents; and

(c) The investor continues to meet the minimum financial requirement set forth in section 1 of LCB File No. R057-08.

3. If the loan is made, the mortgage broker shall retain in his files and provide to the investor:

- (a) A copy of the promissory note;
- (b) A ~~recorded~~ copy of the *recorded* deed of trust securing the loan; and
- (c) A copy of the policy of title insurance on the property securing the loan.

➡ The mortgage broker shall retain in his files a statement, on a form provided by the Division, acknowledging that the documents were provided to the investor.

4. If the loan is made, the mortgage broker shall retain in his files:

(a) A copy of a policy of fire insurance which is adequate to cover the replacement costs of all improvements on the property securing the loan, including an endorsement naming the investor as the insured, when applicable;

(b) If the investor is not a natural person, a copy of its statement authorizing the loan; and

(c) If the borrower is not a natural person, a copy of its statement authorizing the loan.

5. The mortgage broker shall store his original notes, if retained, in a fireproof container or room.

6. If the mortgage broker has obtained an appraisal or any other independent assessment of the value of the mortgaged property, the mortgage broker shall provide a copy of the appraisal or independent assessment to the:

(a) Investor, upon request; and

(b) Borrower, upon request, if the borrower has paid for the appraisal or independent assessment.

Sec. 34. NAC 645B.220 is hereby amended to read as follows:

645B.220 1. The disclosure form given to an investor pursuant to NRS 645B.185 must ~~be~~:

(a) *Be* the form prescribed by the Commissioner ~~is~~;

(b) Disclose in a clear manner the risks to the investor of holding a high concentration of the investor's portfolio in loans secured by liens on real property; and

(c) If the beneficial interest in the loan belongs to more than one natural person, state in a clear manner that, unless otherwise provided by law or by agreement of the parties, the holders of 51 percent or more of the ~~[outstanding principal balance]~~ beneficial interests may act on behalf of all the holders of the beneficial interests of record on matters which require the action of the holders of the beneficial interests in the loan.

2. If the investor is a corporation, the disclosure form required pursuant to NRS 645B.185 may be signed by any person authorized to sign the form on behalf of the corporation, except a mortgage broker or mortgage agent.

Sec. 35. NAC 645B.330 is hereby amended to read as follows:

645B.330 1. The Commissioner may refer to and cooperate with the appropriate federal or state agency for investigation and appropriate action each suspected violation of:

(a) The Truth in Lending Act, 15 U.S.C. §§ 1601 to 1667f, inclusive, including, without limitation, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639, or Regulation Z, 12 C.F.R. Part 226.

(b) The Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 to 1691f, inclusive, or Regulation B, 12 C.F.R. Part 202.

(c) The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 to 2617, inclusive, or Regulation X, 24 C.F.R. Part 3500.

(d) Any other applicable federal or state law or regulation related to mortgage transactions.

2. For the purposes of NRS 645B.670, a mortgage broker or mortgage agent commits a violation if the mortgage broker or a mortgage agent associated with the mortgage broker:

- (a) Engages in a deceptive trade practice as defined in chapter 598 of NRS;
- (b) Fails to refund any fees collected in excess of the actual cost the mortgage broker incurs or pays for any appraisal, credit report or any other product or service provided by a third party in connection with the making of a loan;
- (c) Improperly influences or attempts to improperly influence the proper development, reporting, result or review of a real estate appraisal with respect to the making of a mortgage loan; or
- (d) Violates a provision of:
 - (1) The Truth in Lending Act, 15 U.S.C. §§ 1601 to 1667f, inclusive, including, without limitation, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639, or Regulation Z, 12 C.F.R. Part 226.
 - (2) The Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 to 1691f, inclusive, or Regulation B, 12 C.F.R. Part 202.
 - (3) The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 to 2617, inclusive, or Regulation X, 24 C.F.R. Part 3500.
 - (4) Any other applicable federal or state law or regulation related to mortgage transactions.
 - (5) *Any applicable provision of chapter 106, 107, 111, 112 or 113 of NRS which relate to the servicing of loans secured by a lien on real property.*

3. Nothing in this section shall be construed to prohibit a mortgage broker from requesting an appraiser of real estate to do one or more of the following:

- (a) Consider any appropriate information relating to the property;

(b) Provide additional details, substantiations or explanations in support of the appraiser's valuation of the property; or

(c) Correct errors in the appraisal report.

Sec. 36. NAC 645B.073 is hereby repealed.

Sec. 37. This regulation becomes effective on August 1, 2011.

TEXT OF REPEALED SECTION

645B.073 Documentation for action on behalf of investors when beneficial interest belongs to more than one natural person. (NRS 645B.060, 645B.080)

1. Except as otherwise provided in subsection 3, if a mortgage broker acts on behalf of investors on a matter related to a mortgage loan, and if the beneficial interest in the loan belongs to more than one natural person, the documentation of the matter must include provisions to allow the holders of 51 percent or a greater specified percentage of the beneficial interests of record, calculated by dollar amount, to act on behalf of all the holders of the beneficial interests of record in the event of a default or foreclosure for matters that require the direction or approval of the holders of the beneficial interests in the loan, including, without limitation:

(a) The designation of the mortgage broker, servicing agent or other person to act on the behalf of the holders of the beneficial interests in the loan; and

(b) The sale, encumbrance or lease of real property owned by the holders resulting from a foreclosure or the receipt of a deed in lieu of a foreclosure.

2. The provisions required by this section may be included in the deed of trust, the assignment of interest or any other documentation that binds the mortgage broker and the investors.

3. The provisions of this section do not apply to a transaction involving two investors with equal interests.